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*Attorneys for Kulmer Properties, LLC*

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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In re:

COBRA ENTERPRISES OF UTAH,  
INC.

Debtor.

Bankruptcy No. 20-21070  
Chapter 7

Judge Joel T. Marker

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**MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

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Kulmer Properties, LLC (“**Kulmer**”), landlord and creditor of the above-named Debtor, hereby moves this Court pursuant to 11 U.S.C. § 362(d)(1) for an Order granting relief from the automatic stay of 11 U.S.C. §362(a) to allow Kulmer to exercise all of its rights and remedies in accordance with state law with respect to real property occupied by Debtor known as the Ironwood Building located at 1960 South Milestone Drive Suites E and F, Salt Lake City, Utah, 84104 (the “**Premises**”).

In support of its motion, Kulmer respectfully represents as follows:

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334. The matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

2. Kulmer owns the Premises and, pursuant to a written lease dated December 1, 2005 (as amended), leased the Premises to Debtor (the “Cobra Lease”).

3. At some point thereafter (by May, 2019), Bearman Industries, LLC and/or Kodiak Enterprises, Inc. (collectively, the “Later Tenants”) began to occupy the Premises and may have acquired all or some of Debtor’s interest in the Premises (as well as other of Debtor’s business interests).

4. Kulmer and the Later Tenants verbally agreed to terms for the lease of the Premises (the “New Lease”) but neither of the Later Tenants ever executed a lease regarding of the Premises, despite Kulmer’s efforts.

5. Bearman Industries, LLC began paying rent for the Premises pursuant to the New Lease in May of 2019, but soon fell behind, eventually defaulting on the New Lease, in breach of the same.

6. After the Later Tenants began occupying the Premises, the Debtor no longer paid rent, no longer appeared to occupy the Premises, and otherwise did not act as though it was subject to the Cobra Lease.

7. Debtor’s last payment of rent for the Premises was in March of 2019.

8. Debtor filed for Chapter 7 Bankruptcy relief on February 24, 2020 (the **“Petition Date”**).

9. The Debtor's Statement of Financial Affairs ("SOFA") and bankruptcy schedules state that the Debtor subleases a portion of the Premises to Kodiak. SOFA, ¶55.1; Bankruptcy Schedule H, ¶ 2.1 [Dkt. 3].

10. Kulmer has received no rent payments for the Premises since well-prior to the Petition Date.

11. To the extent the Cobra Lease was an unexpired lease as of the Petition Date, the lease has been deemed rejected as a matter of law by the passage of time (i.e., "120 days after the date of the order for relief") pursuant to 11 § 365(d)(4)(A)(i).

12. Kulmer wishes to exercise its state law and other rights to lawfully obtain possession of the Premises, whether it be from the bankruptcy estate, the Debtor, the New Tenants, or others who may be in possession.

13. The foregoing constitutes "cause" for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

WHEREFORE, Kulmer Properties, LLC prays for an Order:

1. Granting Kulmer's *Motion for Relief from the Automatic Stay*;
2. Terminating the automatic stay with respect to any and all actions and remedies available to Kulmer with respect to the Premises under state law, including, but not limited to, evicting from the Premises the bankruptcy estate, the Debtor, or other persons or entities in possession pursuant to Utah unlawful detainer statutes;
3. Providing that the termination of the automatic stay also applies to any conversion of this bankruptcy case to one under another chapter of the Bankruptcy Code; and

4. Granting such other and further legal and equitable relief as the Court deems just and proper under the circumstances.

DATED July 22<sup>nd</sup> 2020

/s/ Douglas J. Payne  
Douglas J. Payne  
FABIAN VANCOTT  
*Attorneys for Kulmer Properties, LLC*

### **CERTIFICATE OF SERVICE**

#### **Electronic Service – BY NOTICE OF ELECTRONIC FILING (CM/ECF)**

I hereby certify that on July 22<sup>nd</sup> 2020, I electronically filed the **MOTION FOR RELIEF FROM THE AUTOMATIC STAY** with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users and will be served through the CM/ECF system:

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#### **Mail Service – BY REGULAR FIRST-CLASS MAIL**

I further certify that on July 22<sup>nd</sup> 2020, I caused to be served a true and correct copy of the foregoing **MOTION FOR RELIEF FROM THE AUTOMATIC STAY** by first-class mail, postage prepaid, addressed to:

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/s/    Douglas J. Payne

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